

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
DELTA DIVISION

WILLIAM E. GLASS, individually and on  
behalf of all others similarly situated,

Plaintiffs,

vs.

BEVERLY ENTERPRISES, INC., ET AL.,

Defendants.

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CASE NO. 3:05cv-145-B-A

**MOTION TO DISMISS FOR FAILURE TO PROVIDE  
WRITTEN NOTICE OF INTENTION TO BEGIN THE ACTION**

COME NOW, all defendants in the above-styled case, and move this Court, pursuant to the Miss. Code Ann. § 15-1-36(15), to dismiss the claims of Ann Rutherford in her representative capacity for John Wayne Dobbs, for her failure to provide the defendants with written notice of her intention to begin this action.<sup>1</sup> As grounds, the defendants show the Court as follows:

1. Miss. Code Ann. § 15-1-36(15) provides that “[n]o action based upon the health care provider's professional negligence may be begun unless the defendant has been given at least sixty (60) days' prior written notice of the intention to begin the action.”

2. The defendants have no record of any prior written notice of Ms. Rutherford's intention to begin the action. *See* Affidavit of Charles Small, attached hereto as Exhibit A.

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<sup>1</sup> There is no such corporate entity as Beverly Healthcare, Inc. Furthermore, William R. Floyd and David R. Devereaux each appear specially, and each reserves his defense of lack of personal jurisdiction.

WHEREFORE, the defendants request that the Court dismiss the claims of Ann Rutherford in her representative capacity for John Wayne Dobbs, for her failure to provide the defendants with written notice of her intention to begin this action.

s/ Robert B. McGinley, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2006, the foregoing document was electronically filed with the Clerk of this Court using the CM/ECF system which will send notification of such filing to the following:

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